Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Protecting and Promoting the Open Internet	)	GN Docket No. 14-28
	)	
Framework for Broadband Internet Service	)	GN Docket No. 10-127
	)	

To: The Commission

COMMENTS OF THE
CONSUMER ELECTRONICS ASSOCIATION

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EXECUTIVE SUMMARY

The consumer electronics industry supports an open Internet and the consumer benefits such openness promotes, but this priority must be balanced against the critical need to preserve sufficient flexibility to innovate. Broadband providers' flexibility would be compromised significantly by heavy-handed regulation that is unnecessary in today's competitive broadband market. Rather, the Commission should focus on forward-looking efforts such as deploying more spectrum and promoting competition, an approach that will lead naturally to continued Internet openness.

If the Commission nevertheless determines that new rules are necessary, it should rely on its court-approved Section 706 authority and adopt rules that are no more burdensome than the 2010 no-blocking and non-discrimination rules. Any new rules should permit individualized arrangements that are "commercially reasonable," and the standard for "commercial reasonableness" must take into account market realities. Proposals to ban "commercially reasonable" arrangements between edge providers and broadband providers would stifle innovation within broadband networks, hindering enhancements in devices, applications, services, and content.

Finally, the Commission should ignore calls to adopt a Title II approach for broadband regulation, a result supported by the clear absence of blocking and discrimination among U.S. broadband providers today without a Title II regime. Reclassifying broadband as a Title II service is unwarranted and excessive, even if the Commission were to forbear from application of certain Title II provisions. Reclassification also is counterproductive; given the forthcoming broadcast incentive auction and other important Commission priorities, it would be unwise to reignite such a contentious debate at this time. In any event, if the Commission pursues Title II regulation, the result almost certainly will be further litigation and regulatory uncertainty, which will deter broadband investment and ultimately harm consumers.

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I. INTRODUCTION

The Consumer Electronics Association ("CEA")[1] respectfully submits these comments in response to the above-captioned Notice of Proposed Rulemaking ("*Notice*") and Public Notice ("*PN*").[2] As CEA has explained previously, the consumer electronics industry supports an open Internet and the consumer benefits such openness promotes.[3] In considering how best to ensure an open Internet, the Commission must bear in mind the critical need to preserve sufficient

[1] CEA is the principal U.S. trade association of the consumer electronics and information technologies industries. CEA's more than 2,000 member companies lead the consumer electronics industry in the development, manufacturing and distribution of audio, video, mobile electronics, communications, information technology, multimedia, and accessory products, as well as related services, that are sold through consumer channels. Ranging from giant multinational corporations to specialty niche companies, CEA members cumulatively generate more than $208 billion in annual factory sales and employ tens of thousands of people in the United States.

[2] *Protecting and Promoting the Open Internet*, Notice of Proposed Rulemaking, 29 FCC Rcd 5561 (2014) ("*Notice*"); *Wireline Competition Bureau Seeks to Refresh the Record in the 2010 Proceeding on Title II and Other Potential Legal Frameworks for Broadband Internet Access Service*, GN Docket No. 10-127, Public Notice, DA 14-748 (rel. May 30, 2014) ("*PN*").

[3] *See* CEA Comments, GN Docket No. 14-28, at 1 (Mar. 21, 2014) ("CEA March 2014 Comments"); *New Docket Established to Address Open Internet Remand*, Public Notice, 29 FCC Rcd 1746 (WCB 2014).

flexibility to innovate. Broadband providers' flexibility would be compromised significantly by heavy-handed regulation that is unnecessary in today's broadband market. The Commission should focus on forward-looking efforts such as deploying more spectrum and promoting competition, an approach that will lead naturally to continued Internet openness. If the Commission nevertheless determines that new rules are necessary, it should rely on the path the court laid out for it in the *Verizon* decision and use its legally sound Section 706 authority to adopt rules that are no more burdensome than the 2010 no-blocking and non-discrimination rules.

Any new rules should permit individualized arrangements that are "commercially reasonable," and the standard for "commercial reasonableness" must take into account market realities. Proposals to ban "commercially reasonable" arrangements between edge providers and broadband providers would stifle innovation within broadband networks, hindering enhancements in devices, applications, services, and content.

Finally, the Commission should ignore calls to adopt a Title II approach for broadband regulation, a result supported by the absence of blocking and discrimination among U.S. broadband providers today without a Title II regime. The Commission itself has stated that it has found no evidence of blocking and discrimination today. Reclassifying broadband as a Title II service thus is unwarranted and excessive, even if the Commission were to forbear from applying certain Title II provisions to some entities. Reclassification also is counterproductive; given the forthcoming broadcast incentive auction and other important Commission priorities, it would be unwise to reignite such a contentious debate at this time. The Commission's resources should be focused on addressing immediate challenges, such as providing additional licensed and unlicensed spectrum opportunities to benefit all consumers, rather than finding itself using those,

and additional, resources engaged in a protracted legal challenge to the imposition of Title II on some or all broadband and broadband-related services.

II. PRESERVING SUFFICIENT FLEXIBILITY TO INNOVATE IS VITAL TO THE FUTURE OF THE INTERNET

The Internet is a critical platform for economic growth and a 21st century engine for innovation, and the Commission should not risk stifling its advancement. Broadband services developed under "light touch" regulation, making American ingenuity and innovation the envy of the world; going forward, they must be allowed to evolve without being hamstrung by regulation. Thus, as a starting point in this proceeding, the Commission must bear in mind the need to balance any regulatory action with preserving sufficient flexibility to afford continued innovation. Striking this balance is vital to the future of the Internet.

With the right steps by government and innovators, broadband – especially mobile broadband – is the key to the economic future for the United States and the world.[4] Broadband increases productivity and fosters innovation, sparks jobs, and grows the economy. The companies that build and operate broadband devices, networks, and applications already directly employ more than 400,000 people in the wireless space alone, and nearly 1.4 million people work in jobs that support the wireless industry (contractors, marketers, suppliers, etc.) and would not exist if not for that sector's success.[5] These remarkable achievements all have occurred

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[4] Gary Shapiro, *Congress Gets It On Wireless Broadband*, FORBES, Feb. 22, 2012, http://www.forbes.com/sites/garyshapiro/2012/02/22/congress-gets-it-on-wireless-broadband/; *see also* Gary Shapiro, *Cut the Deficit, Add Jobs and Unleash America's Spectrum Potential*, ROLL CALL, Sept. 20, 2011, http://www.rollcall.com/news/shapiro_cut_the_deficit_add_jobs_and_unleash_americas_spectrum_potential-208871-1.html.

[5] ROGER ENTNER, RECON ANALYTICS, THE WIRELESS INDUSTRY: THE ESSENTIAL ENGINE OF US ECONOMIC GROWTH, at 15 exhibit 7 (2012), *available at* http://reconanalytics.com/wp-content/uploads/2012/04/Wireless-The-Ubiquitous-Engine-by-Recon-Analytics-1.pdf (analyzing data of the US Bureau of Labor Statistics).

under the FCC's correct and longstanding decision to address broadband with a light touch regulatory framework. In addition, the wireless industry contributes an estimated $88.6 billion in fees, surcharges, and taxes to federal, state, and local authorities.[6] The Commission must be careful not to endanger any of these benefits.

Broadband also is a key driver of productivity for other industries, as well as a critical tool for new developments in health care, education, and civic engagement. Remote and mobile access to business applications enables more flexible and productive work arrangements for many industries, including manufacturing and construction. Broadband reduces unproductive travel time, improves logistics, and speeds and streamlines decision making. Broadband also improves access to healthcare services and transforms the level and nature of those services, regardless of physical location; this reduces health care costs and improves – and even saves – lives.[7] In addition, broadband is key to improvements in education, helping to create opportunities for students in all income brackets.[8] Broadband also is driving unprecedented

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[6] *Id.* at 25, exhibit 12.

[7] For example, broadband allows for videoconferencing between a patient and a health care provider, or between two or more providers, a development that is particularly valuable for patients with limited mobility and for bringing access to specialists in rural and underserved areas. Remote and mobile access to electronic health records and sophisticated diagnostic applications already are in use. Broadband and mobile devices also enable remote monitoring of patients with chronic conditions, including cardiovascular problems, asthma, and diabetes.

[8] *See* Press Release, The White House, President Obama Unveils ConnectED Initiative to Bring America's Students into Digital Age (June 6, 2013), *available at* http://www.whitehouse.gov/the-press-office/2013/06/06/president-obama-unveils-connected-initiative-bring-america-s-students-di ("[T]o help our students get ahead, we must make sure they have access to cutting-edge technology. So today, I'm issuing a new challenge for America . . . to connect virtually every student in America's classrooms to high-speed broadband internet . . . ."); Arne Duncan, Sec'y, Dep't of Educ., Getting America Wired for Educational Opportunity, Remarks for The Cable Show 2013, Walter E. Washington Convention Center (June 12, 2013), *available at* http://www.ed.gov/news/speeches/getting-america-wired-educational-opportunity ("[T]echnology is critical to raise the bar for all students and close what I call the 'opportunity gap.' But so much of this depends on good access to the Internet.").

levels of civic engagement between public officials and their constituents.[9] Many consumers rely on broadband to access important information, including using their mobile devices as a constant source of anytime, anywhere access to local, national, and world news on the issues of the day. American citizens do not just receive information from the Internet – they use it to connect and share their own ideas around the globe. While the First Amendment gives individuals the right to express their ideas, today it is the Internet that provides the means for them to do so on a wide scale.

For all these reasons, CEA has strongly supported the efforts of the Administration, Congress, and the Commission to free up new spectrum for wireless broadband.[10] More broadly, sensible open Internet policies can work in tandem with forward-thinking spectrum policy to promote innovation and competition. The Internet ecosystem, particularly applications and devices, is competitive and continues to evolve rapidly. In 2014, anyone with a broadband connection and a connected device can create a global business that generates billions of dollars

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For example, mobile access to digital instructional content has shown promise in engaging at-risk, poorly performing high school and middle school students, and mobile wireless devices enable customized educational experiences tailored to students' individual needs and interests.

[9] In this vein, former U.S. Chief Technology Officer Aneesh Chopra recently published *Innovative State: How New Technologies Can Transform Government*, a "playbook" for open innovation that proposes a new government paradigm for addressing public policy challenges in the Internet era. *See* ANEESH CHOPRA WITH ETHAN SKOLNICK, INNOVATIVE STATE: HOW NEW TECHNOLOGIES CAN TRANSFORM GOVERNMENT (2014).

[10] *See, e.g.*, Press Release, CEA, CEA Commends FCC for Taking Crucial Step Toward Spectrum Incentive Auction (May 15, 2014), *available at* http://www.ce.org/News/News-Releases/Press-Releases/2014/CEA-Commends-FCC-for-Taking-Crucial-Step-Toward-Sp.aspx ("By approving the rules for the world's first TV broadcast voluntary spectrum incentive auction, the FCC has taken a crucial step toward unleashing valuable spectrum to help fuel our growing demand for 'anywhere/anytime' connectivity. . . . We applaud Chairman Wheeler, the commissioners and dedicated FCC staff for their commitment to U.S. innovation and the wireless economy.").

of wealth.[11] Enabling the broadband industry to continue innovating will help the United States remain a world leader in developing and deploying new broadband products and services.

Innovators are risk-takers who think outside the box and strategize solutions to problems previously unknown to us. Just as the world we live in today is fundamentally different from the world 20 years ago, we cannot imagine how the world will work 20 years from now – or even five. For example, the Internet of Things is the next phase in the development of the Internet and the World Wide Web.[12] This machine-to-machine communication of the connected world represents a major step forward in technology, and new ideas are launched every minute. The technological progress that was demonstrated at the 2014 International CES in January has the potential to change the world and consumers' lives – and many of these developments may be displaced by newer, even better solutions at the 2015 International CES.

Innovation is the lifeblood of the U.S. economy, and even well-intended regulation can substantially chill innovation. The Commission must proceed carefully; any action it takes in this proceeding must be balanced with the importance of affording continued flexibility in the Internet environment, so there is no harm to innovation. As manufacturers, app developers, operating system providers, and carriers collaborate to deploy new products and services, artificial constraints on one element of the ecosystem will negatively impact the others, threatening the "virtuous cycle" of innovation and investment. The Commission should take a careful, narrow approach to ensure that its efforts to promote Internet openness do not undermine it.

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[11] Gary Shapiro, President and CEO, CEA, Innovation, Internet Governance, and Freedom of Expression Around the World, Remarks at the Brookings Institution (June 4, 2014).

[12] CEA Comments, Privacy and Security Implications of the Internet of Things, Federal Trade Commission Project No. P135405, at 4 (June 10, 2013).

III. NEW OPEN INTERNET RULES ARE UNNECESSARY AND COULD HINDER INNOVATION

As Chairman Wheeler said in 2013, "'[r]egulating the Internet' is a non-starter," and "competitive markets produce better outcomes than regulated or uncompetitive markets."[13] Together with the Commission's existing transparency rule,[14] competitive forces should be sufficient to preserve an open Internet without the need for additional regulation. Absent conclusive evidence of conduct that precludes Internet openness, reinstating the non-discrimination and no-blocking rules – and, most certainly, going beyond those rules – would merely increase regulatory burdens without a corresponding benefit to consumers.[15] As CEA discussed in its prior comments, consumers today have a choice among many national and regional wireline providers, and, according to 2010 data, 97.8% of the population has access to

[13] Tom Wheeler, Chairman, FCC, Prepared Remarks, The Ohio State University, at 3 (Dec. 2, 2013), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-324476A1.pdf.

[14] 47 C.F.R. § 8.3 (requiring broadband Internet access providers to "publicly disclose accurate information . . . sufficient for consumers to make informed choices regarding the use of such services"). In this proceeding, the FCC should reaffirm its existing transparency rule and refrain from adopting additional transparency requirements. The rule provides access to accurate information about broadband provider practices, encouraging competition, innovation, and high-quality services that drive consumer demand and broadband investment and deployment. Under the rule, users can make informed choices regarding the purchase and use of broadband services, and if for some reason a user is not confident in his or her broadband provider's practices, the user has the option of switching to another provider. *See Preserving the Open Internet*, Report and Order, 25 FCC Rcd 17905, 17836-37 ¶ 53 (2010) ("*Open Internet Order*"), *aff'd in part, vacated and remanded in part sub nom. Verizon v. FCC*, 740 F.3d 623 (D.C. Cir. 2014). Additional disclosure requirements are unnecessary and could excessively burden broadband providers, impeding innovation and discouraging investment. *See Notice*, ¶¶ 66-88. "Unjustified complaint[s]" should not form the basis for burdensome transparency requirements. *Id.*, ¶ 82.

[15] As discussed in the following section, if the Commission nevertheless decides to act, it should do so within the limits of Section 706 and should consider the key facts surrounding the broadband market.

two or more mobile broadband providers.[16] Thus, a consumer can select a new provider if the service of his existing provider falls below expectations. The transparency rule, which requires disclosure of "accurate information … sufficient for consumers to make informed choices," ensures that the consumer has the information necessary to make that decision.

In addition, because consumers fervently demand access to edge services, broadband providers face competitive pressure to deliver those services efficiently. Providers that fail to do so risk losing business, since competition enables consumers to switch providers or incentivize others to develop competing applications if they are unable to use edge services. Transparency also discourages intentional blocking or discrimination against edge services by inviting intense scrutiny from the public, the press, and regulators. Perhaps more than any regulation, potential reputational harm through negative media attention and an investigation into a provider's alleged practices deters behaviors contrary to open Internet principles.[17]

Because Internet openness is protected by the dynamic and competitive broadband marketplace, it would be unwarranted and unwise to impose additional regulations that could irreparably harm the environment in which the Internet has flourished. The Commission must proceed carefully to ensure its regulatory regime continues to fuel – not suppress – the virtuous cycle of innovation in which new devices, applications, services, and content drive consumer demand for broadband and improvements to broadband networks.[18] Consumers today want the

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[16] CEA March 2014 Comments at 2 (citing *Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless Including Commercial Mobile Services*, Sixteenth Report, 28 FCC Rcd 3700 ¶ 2 (2013)). *See* FCC, Internet Access Services: Status As of June 30, 2013, at 10 (June 2014), *available at* http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0625/DOC-327829A1.pdf.

[17] CEA March 2014 Comments at 3 and n.8. This is part of the "virtuous cycle" the Commission described in its 2010 order. *Id.* (citing *Open Internet Order*, 25 FCC Rcd at 17910 ¶ 14).

[18] *See Notice*, ¶ 26.

ability to access any content they want on the Internet, and they will continue to desire this ability even as the content itself evolves through innovation. Nothing in today's economic and regulatory structure interferes with Internet openness, and the Commission should not adopt backward-looking rules that will prevent innovators from developing an even better Internet going forward.

Instead, the Commission should focus its efforts on deploying more spectrum and promoting competition, a more forward-looking approach that naturally will lead to continued Internet openness. Reallocating spectrum for wireless broadband use would facilitate rapid broadband deployment and an even more competitive, pro-consumer broadband marketplace where consumers have additional choices if for some reason a broadband provider were to engage in self-defeating practices that limit Internet openness.

IV. IF THE COMMISSION ADOPTS NEW RULES, IT SHOULD SIMPLY REINSTATE THE 2010 NO-BLOCKING AND NON-DISCRIMINATION RULES USING SECTION 706 OF THE TELECOMMUNICATIONS ACT

To retain sufficient flexibility to promote valuable and necessary innovation, new rules should, at most, re-codify the principles underlying the vacated no-blocking and non-discrimination rules. This can be accomplished within the confines of the Commission's limited authority under Section 706 and following the D.C. Circuit's guidance. In doing so, the Commission must take into account the competitive status of broadband service and ensure that its rules do not impede these services. Although edge provider innovation can lead to the expansion and improvement of broadband infrastructure,[19] broadband provider innovation similarly can enable enhancements in applications, services, content, and devices. The Commission's rules should not preclude such innovation.

[19] *See id.*, ¶ 28 (citing *Verizon*, 740 F.3d at 644).

Specifically, if it determines new rules are necessary, the Commission should adopt the text of the 2010 no-blocking rule as proposed in the *Notice*, with a clarification that the rule does not preclude broadband providers from negotiating individualized, differentiated arrangements with similarly situated edge providers.[20] For mobile broadband, the Commission should at most adopt the same approach as in the 2010 obligations, which provided more flexibility than the rules for fixed broadband by limiting the mobile no-blocking rule to lawful web content and applications that compete with a provider's own voice or video telephony services, subject to reasonable network management.[21] The Commission's decision in 2010 was based on "the operational constraints that affect mobile broadband services, the rapidly evolving nature of the mobile broadband technologies, and the generally greater amount of consumer choice for mobile broadband services than for fixed."[22] The same conclusions apply to mobile broadband today, as well as the multiplicity of choices, and thus the Commission should again apply lighter regulation, if any, to those offerings.

In addition, the Commission should permit individualized arrangements that are "commercially reasonable"[23] and ensure that the standard for "commercial reasonableness" takes market realities into account. The reality is that not all applications are the same, and prioritization can have benefits. Some applications are more sensitive to packet loss, delay, and latency than others. There may be certain categories of applications and services, such as health-related applications, where consumers could benefit from prioritization. Similarly, some voice services may benefit from being handled differently than email, and the same is true for some

[20] *Notice*, ¶¶ 89, 94-95, 109.

[21] *Id.*, ¶ 105.

[22] *Id.*, ¶ 91 (citing *Open Internet Order*, 25 FCC Rcd at 17956-57 ¶ 94-95, 17959-60 ¶ 99).

[23] *Notice*, ¶ 116.

video applications vis-à-vis plain data. The marketplace can determine which arrangements make sense and ultimately will benefit consumers.[24] In particular, the Commission should exclude mobile broadband services from any "commercial reasonableness" requirement. These services are subject to technical and operational constraints that require greater flexibility for reasonable network management practices,[25] and the level of competition in the marketplace is sufficient to ensure that mobile broadband arrangements necessarily are reasonable. In addition, it would be counterproductive to subject nonexclusive arrangements between a broadband provider and an edge provider to a commercial reasonableness standard, which "would unnecessarily impede efficient and pro-consumer arms-length commercial dealings" without any countervailing benefit.[26] Fears that "commercially reasonable" paid prioritization will automatically degrade service for other users, relegating them to a so-called "slow lane," have not been realized to date.

Any rules adopted in this proceeding should be confined solely to last-mile transmissions.[27] There is no need to further increase regulatory uncertainty by bringing peering and interconnection issues into this proceeding, if the Commission addresses them at all. The Commission also should continue to follow the important distinction between broadband Internet access services and specialized services adopted in the *Open Internet Order* and decline to

[24] Just as prioritization of certain types of data may be appropriate in some cases, it is not unfair for people who clog up the system to pay more, so that others are not forced to subsidize their high-bandwidth use. Peter Nowak, *CEA head Gary Shapiro on NSA, net neutrality*, WORDS BY NOWAK (May 15, 2014), http://wordsbynowak.com/2014/05/15/ces-shapiro/.

[25] *Notice*, ¶ 140.

[26] *Id.*, ¶ 141.

[27] *Id.*, ¶ 59 (tentatively concluding that the new rules should not apply to the exchange of traffic between networks and provider-owned facilities that are dedicated to such interconnection).

subject specialized services to any new regulations.[28] There has been no evidence that the specialized services exemption was used to circumvent the open Internet rules when they were in effect, and there is no basis to diverge from the approach the Commission took in 2010. Similarly, the Commission should adopt the *Notice*'s tentative conclusion to maintain the approach of the 2010 rules with regard to "reasonable network management."[29] There is no need to establish any specific limitations on what constitutes reasonable network management.

V. RECLASSIFYING BROADBAND AS A TITLE II SERVICE WOULD BE EXCESSIVE AND COUNTERPRODUCTIVE

The Commission should not revisit its classification of broadband Internet access service as an information service.[30] Title II regulation, even with forbearance from application of certain legacy rules, would hamstring the flexibility that is key to broadband innovation.[31] This is

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[28] *Id.*, ¶ 60; *see Open Internet Order*, 25 FCC Rcd at 17928 ¶ 39, 17965-66 ¶¶ 112-14.

[29] *Notice*, ¶ 61.

[30] *Id.*, ¶ 148.

[31] *See id.*, ¶ 151-55; *see also PN*. It is not clear that the Commission may reclassify broadband Internet access services as Title II services even if desires to do so. The classification of broadband service depends on "the factual particulars of how Internet technology works and how it is provided." *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 991 (2005). The Commission cannot depart from its long-held conclusion that broadband Internet access is an information service, given that the underlying facts of Internet technology have not changed. Moreover, reclassification would require a more detailed justification than the *Notice* affords or than the record can provide. Although the Commission has discretion to change its policies as a general matter, if a new policy "rests upon factual findings that contradict those which underlay its prior policy" or the prior policy "has engendered serious reliance interests," the Commission must provide a "reasoned explanation." *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). The Commission has not met this threshold.

Moreover, the Commission is bound by Congress's definitions of "telecommunications service" and "information service," and it cannot conclude on the face of those definitions that broadband Internet access service is a telecommunications service. The Act defines "information service" as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications…," 47 U.S.C. § 153(24), "telecommunications" as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received," *id.* § 153(50), and "telecommunications service" as the

particularly true with respect to mobile broadband, where the Commission has recognized that light-touch regulation is most appropriate. As CEA has explained previously in this proceeding and in these comments, overbroad regulations will stifle competition and innovation, and may curtail legitimate network management practices.[32] Broadband providers, and mobile broadband providers in particular, must be allowed to develop their service offerings based on consumer demand and evolving technologies, not based on common carrier requirements.

The Commission already has considered reclassification and wisely declined to take that approach.[33] It should do so again here. In contrast, reigniting the debate over reclassification would be unnecessary and unproductive. Title II, enacted 80 years ago, was based on a telecommunications market that bears no resemblance to today's broadband ecosystem. Applying this regulatory regime to broadband services would be a tremendous step backward, with the possible imposition of rate regulation, tariffing requirements, depreciation mandates, and other arcane rules that are wholly out of place today. The Commission must recognize the risks inherent in sending some of the most innovative companies into a new era of utility-style regulation, replicating the regime in which the Commission regulated every connection and every device.

Reclassification would be an excessive "solution" out of proportion to the perceived problem, especially given that any discriminatory behaviors very likely would be mitigated by a competitive market. Moreover, it is nonsensical for the Commission to attempt to balance the

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provision of "telecommunications" "for a fee directly to the public, or to such classes of users as to be effectively available directly to the public," *id.* § 153(53). The information processing and transmission parts of broadband Internet access service are too closely integrated to be viewed as separate offerings; the Commission must continue to consider this an information service.

[32] CEA March 2014 Comments at 7.

[33] *Framework for Broadband Internet Service*, Notice of Inquiry, 25 FCC Rcd 7866 (2010); *Open Internet Order*, 25 FCC Rcd at 17968 ¶ 117.

imposition of restrictive and burdensome Title II requirements by forbearing from application of some provisions. The promise of forbearance offers little regulatory certainty and does nothing to alleviate the core obligations imposed on Title II services. In any event, if the Commission pursues Title II regulation, the result almost certainly will be further litigation and regulatory uncertainty. Whether through complicated forbearance proceedings and/or judicial appeals, prolonged instability over "rules of the road" for Internet openness will deter investment and innovation and divert Commission resources from critical regulatory priorities.

VI. CONCLUSION

The Internet is the engine that drives America, and innovation drives the Internet economy and the many benefits that flow from it. The Commission rightly is focused on ensuring the continued openness of the Internet, and it has the ability to do so under its Section 706 authority. Any backward-looking, heavy-handed regulation would undermine the many benefits that the Internet offers today and promises for the future. If the Commission focuses on forward-looking efforts such as deploying more spectrum and promoting competition, this approach naturally will lead to Internet openness, benefiting all Americans.

Respectfully submitted,

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